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HIGHER EDUCATION

COMMISSION ON HIGHER EDUCATION

Rules and Procedures for Implementation of the Higher Education Equipment
Leasing Fund Act

Proposed Readoption with Amendments: N.J.A.C. 9A:14

Authorized By: Commission on Higher Education, Laurence M. Downes, Chair

Authority: N.J.S.A. 18A:72A-40 and P.L. 1993, c.136

Calendar Reference: See Summary below for explanation of exception to calendar
requirement.

Proposal Number: PRN 2004 - 180

Submit written comments by July 2, 2004 to:

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The agency proposal follows:

Summary

On June 5, 1993, P.L. 1993 c.136 was enacted. The law establishes a higher education equipment leasing fund in the New Jersey Educational Facilities Authority. The act authorizes the Authority to issue bonds in a total outstanding principal amount of \$100,000,000 to finance the purchase of scientific, engineering,

technical, computer, communications, and instructional equipment for lease to New Jersey public and independent institutions of higher education. The Authority may enter into lease agreements with institutions to finance the acquisition of such equipment by the institutions. The leasing fund is renewable upon approval by the State Treasurer.

The rules for the Equipment Leasing Fund specify the process for approval of institutional purchases supported by leasing fund moneys, requiring approval by the Commission on Higher Education of all such purchases before execution of a lease agreement between the college or university and the Authority. The rules were originally promulgated by the former Board of Higher Education (BHE); subsequent technical amendments reflected the Higher Education Restructuring Act of 1994, which abolished the Board and created the Commission.

In 1999, after expenditure of the fund's initial \$100,000,000 had been approved, the Commission readopted N.J.A.C. 9A:14, to ensure having rules in place for any future bond issues. The leasing fund was reauthorized in FY 2001, and the Commission has since approved expenditure of the second \$100,000,000. The current leasing fund rules are set to expire on November 13, 2004, pursuant to N.J.S.A. 52:14B-5.1c. The Commission again proposes readoption, to be ready in the event of another reauthorization.

The equipment leasing fund statute requires the Commission to allocate any moneys made available from new bond issues. Amendments to the current rules for the fund are proposed to remove obsolete language that reflects the original institutional and project allocations. Other obsolete language referring to the former BHE and to past dates is also proposed for deletion. A summary of the rule sections follows.

N.J.A.C. 9A:14-1.1 sets forth the chapter's purpose and authority; no amendments are proposed.

N.J.A.C. 9A:14-1.2 defines various terms used in the chapter. Proposed for deletion are definitions of the former BHE and the "emerging needs program," because these terms are no longer part of the chapter's rule text. The definition of "institution" is proposed for amendment by adding the word "Amending" to clarify that the word is defined in the leasing fund statute, which is the Amending Act.

N.J.A.C. 9A:14-1.3 delineates the process for purchasing equipment under the Higher Education Equipment Leasing Fund and specifies the information that must be included in proposals. At N.J.A.C. 9A:14-1.3(c) and (e), superfluous references to original approvals by the former BHE are proposed for deletion.

No amendments are proposed for N.J.A.C. 9A:14-1.4, which delineates how the principal and interest on bonds will be paid and specifies action that will be taken if an institution fails to pay the appropriate amounts due to the Authority.

N.J.A.C. 9A:14-1.5 currently delineates the allocation of the first \$100 million and specifies how future allocations and reallocations will be determined. The current rule text at N.J.A.C. 9A:14-1.5(g), which expresses the Commission's authority to allocate any new leasing fund moneys, is proposed to replace current N.J.A.C. 9A:14-1.5(a) and (b), which concern the original allocations. At recodified N.J.A.C. 9A:14-1.5(c) and (d), references to past dates are proposed for deletion. At recodified N.J.A.C. 9A:14-1.5(c), obsolete reference to the "emerging needs" program is proposed for deletion, as is the review and approval process for the program, at current N.J.A.C. 9A:14-1.5(h). N.J.A.C. 9A:14-1.5(e) and (f) would be recodified.

N.J.A.C. 9A:14-1.6 summarizes reporting requirements for the Authority and the Commission; no amendments are proposed.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

More than 360,000 students are enrolled in New Jersey colleges and universities. To be prepared for careers in a world of rapidly changing technology, New Jersey students must be educated using state of the art instructional equipment. The Equipment Leasing Fund supports instructional, computing, or research requirements and help meet emerging technology needs. All public colleges and universities and the independent institutions eligible to receive public funds under the Independent College and University Assistance Act are eligible to purchase equipment through the fund. Having rules in place in the event the leasing fund is renewed will expedite institutional purchases with leasing fund moneys.

Economic Impact

Higher education plays a vital role in the economic development of the State and the nation by providing education and training for the workforce of the future and by advancing science and technology through research. New Jersey has an intense concentration of high-technology industry and research facilities and is home to some of the world's most productive corporations. The Equipment Leasing Fund helps New Jersey institutions meet educational demands, which helps the State compete in the global marketplace. The rules prescribe how institutions may obtain leasing fund moneys for equipment acquisition.

Federal Standards Statement

The rules proposed for readoption with amendments are not subject to a Federal standards analysis under Executive Order No. 27 (1994) because the Equipment Leasing Fund was established by New Jersey legislation, is wholly supported by State appropriations, and is not subject to any Federal requirement or standards.

Jobs Impact

The rules proposed for readoption with amendments will not result in the generation or loss of any jobs, because the rules implementing the Equipment Leasing Fund govern only the process eligible institutions must follow to receive approval for purchases made with leasing fund moneys.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose reporting requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules pertain strictly to nonprofit colleges and universities, none of which qualifies as a small business because all have at least 100 full-time employees.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9A:14.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 14

RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION EQUIPMENT LEASING FUND ACT

9A:14-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

["Board" means the former State Board of Higher Education.]

. . .

["Emerging needs program" means a degree program, function or activity at one or more public or private institutions of higher education directed to meeting new and advanced technology needs within an existing academic program, or to support new academic programs in science and technology or to support new instructional technologies, as solely determined by the Commission.]

. . .

"Institution" means a public or private institution of higher education as defined in the Amending Act.

. . .

9A:14-1.3 Process for purchase of higher education equipment

(a) – (b) (No change.)

(c) Descriptions of the equipment submitted in the proposal may be illustrative, and the equipment to be purchased may be changed as a result of the bidding processes, advances in technology, or for other reasons provided that the equipment had been approved by the governing board of the affected institution and by the [Board (for transactions before July 1, 1994) or] Commission.

(d) (No change.)

(e) The total dollar amount of purchases approved for any institution shall not exceed the institution's allocation as approved by the [Board (for allocations made before July 1, 1994) or] Commission.

(f) – (k) (No change.)

9A:14-1.5 Allocation of funds

[(a) The money deposited into the fund created pursuant to section 5 of the Amending Act shall initially be allocated in the following manner:

1. \$24,000,000 for the leasing of equipment to State colleges;
2. \$19,440,000 for the leasing of equipment to Rutgers, the State University;
3. \$10,080,000 for the leasing of equipment to the University of Medicine and Dentistry of New Jersey;
4. \$6,480,000 for the leasing of equipment to the New Jersey Institute of Technology;
5. \$22,000,000 for the leasing of equipment to the county colleges;
6. \$10,500,000 for the leasing of equipment to private institutions; and

7. \$7,500,000 for the leasing of equipment for the emerging needs programs at institutions.

(b) The Commission shall, by resolution, allocate funds to individual State colleges, county colleges, and private institutions of higher education within the sector allocations above.]

(a) The Commission shall determine the allocation of money available from the authorization of new bonds by the Treasurer as a result of the retirement of bonds previously issued by the Authority pursuant to the Amending Act.

[(c)] (b) The Commission may reallocate [to any institution or to the “emerging needs program”] any balance in the amounts authorized if the amounts are not committed within 18 months of the [effective date of the Amending Act (June 5, 1993) or within 18 months of subsequent] allocations made by the Commission. Funds will be considered committed when a lease agreement has been entered into between an institution and the Authority.

[(d)] (c) No reallocation shall be made pursuant to [(c)] (b) above if:

1. The request for approval has been received by the Commission [within 15 months of June 5, 1993 or] within 18 months [with respect to any amounts that are reallocated or subsequently allocated by the Commission] of the allocation; or

2. – 4. (No change.)

Recodify existing (e) and (f) as (d) and (e). (No change in text.)

[(g) The Commission shall determine the allocation of money available from the authorization of new bonds by the Treasurer as a result of the retirement of bonds previously issued by the Authority pursuant to the Amending Act.

(h) The Chair shall periodically establish and notify institutions of priority areas for the use of funds for emerging needs programs to meet new and advanced technology needs or support new academic programs in science and technology. Institutions may submit an application for funds for a program within the priority areas. The Chair shall review applications on a case by case basis and make recommendations for Commission approval to fund emerging needs programs.]